

**PROGRAM FUNDING AGREEMENT
CALIFORNIA DEPARTMENT OF STATE HOSPITALS
INCOMPETENT TO STAND TRIAL DIVERSION AND COMMUNITY-BASED
RESTORATION INFRASTRUCTURE PROJECTS**

SUMMARY COVER SHEET

Program Funding
Agreement ID

Program Agreement
Effective Date:

Program Funding Agreement Manager: **ADVOCATES FOR HUMAN POTENTIAL, INC.**, a Massachusetts corporation (“AHP”)
490-B Boston Post Road, Sudbury, MA 01776-3365
Tel: (978) 443-0055 ♦ Fax: (978) 261-1467
AHP Contracting Officer: Charles Galland, General Counsel
Tel: (978) 261-1425 (o) | cgalland@ahpnet.com

AHP Designated Representative: Steve Thronson, Program Director
Tel: (760) 333-6337 (c) | sthronson@ahpnet.com

Non-County Entity: **xxx (“XXX”) (“Non-County Entity”)**

Non-County Entity Contracting Officer:

Address

Tel: () - (o) | Email address

Non-County Entity Designated Representative:

Address

Tel: () - (o) | Email address

Prime Contract Identification: **California Department of State Hospitals
Agreement No.: 21-79017-00**

Contract Title: *Incompetent to Stand Trial, Diversion and
Community-Based Restoration Infrastructure*

Contract Type: Deliverable Based Type Contract

Period of Performance: Effective Date through June 30, 2028

Consideration/Budget: Infrastructure Acquisition, Down Payment, Rehabilitation, New Ground-up Construction, and/or furniture, fixtures, and equipment **Not to Exceed \$XXXX**

(This Page is not part of the Program Funding Agreement and is for Summary/Reference Purposes Only)

This Non-County Entity Program Funding Agreement (the “**Agreement**”) is entered into _____, 2024 (the “**Effective Date**”), by and between **ADVOCATES FOR HUMAN POTENTIAL, INC.**, a Massachusetts corporation, with offices located at **490-B Boston Post Road, Sudbury, MA 01776** (“**AHP**”), and **XXX, [insert entity type]** with offices at **ADDRESS** (“**XXX**” or “**Non-County Entity**”). AHP and the Non-County Entity may be referred to separately as a “**Party**” or collectively as “**Parties**.”

RECITALS

A. AHP entered into an agreement with the State of California (the “**State**”) through the California Department State Hospitals (“**DSH**”) to facilitate project funding awards and provide services to DSH as the third-party administrator of the DSH Incompetent to Stand Trial (“**IST**”) Diversion and Community-Based Restoration Infrastructure Program (“**Program**”). The agreement between DSH and AHP shall hereinafter be referred to as the “**Prime Contract**” or “**DSH Contract**”;

B. The purpose of the Program is to expand the State’s access to residential housing infrastructure for individuals found in judicial proceeding to be incompetent to stand trial and eligible for participation in a DSH-funded diversion or community-based restoration program;

C. Subject to the requirements of the Program, DSH guidelines, and this Agreement, non-county entities may use their allocation of program funds for acquisition, or down payment for acquisition, construction or renovation of real property, furnishings, and minor equipment to address the increasing number of patient referrals to DSH;

D. On or about November 7, 2023, DSH issued that certain Request for Proposals (the “**RFP**”), attached to this Agreement and incorporated herein by this reference as **Attachment A**. In response to the RFP, the Non-County Entity submitted that certain proposal to provide _____ beds for IST individuals (“**Non-County Entity Proposal**”), attached to this Agreement and incorporated herein by this reference as **Attachment B**;

E. The Non-County Entity and AHP, each, desire the Non-County Entity to submit to AHP for approval by AHP and DSH, the Non-County Entity’s Project Application (defined in Section 3.3.1). Each project to be described in the Project Application is referred to herein as the “**Infrastructure Project**”;

F. DSH issued to the Non-County Entity that certain letter dated _____, (“**Award Letter**”), attached to this Agreement and incorporated herein by this reference as **Attachment C**, approving the Non-County Entity Proposal and awarding to the Non-County Entity program funds for the Non-County Entity Proposal in an amount not to exceed _____ (\$ _____ .00) (“**Program Funds**”); and

G. This Agreement sets forth the terms and conditions of AHP’s administration and management of the Program Funds and the Non-County Entity’s duties and obligations related to its receipt of Program Funds. Capitalized terms not defined herein shall have the meanings ascribed thereto in the California Welfare and Institutions Code section 4361.6.

NOW, THEREFORE, based upon the foregoing, and in consideration of the mutual covenants and agreements herein set forth, the Parties agree as follows:

ARTICLE 1.
AUTHORITY

Welfare and Institutions Code section 4361.6, provides the statutory basis for the Program and California Senate Bill 154 (Chapter 43, Statutes of 2022), the Budget Act of 2022, provides the funding for the Program. AHP provides technical assistance, general training, and support to non-county entities on administration, disbursement and monitoring of the Program Funds, and administration and fund management to DSH. This Agreement is entered under the authority of and in furtherance of the Program and is the result of the Non-County Entity Proposal.

This Agreement is governed by the following (collectively, the “**Program Requirements**”), and each of the following, as amended and in effect from time to time, is hereby incorporated by this reference as if set forth herein in full:

- 1.1 California Welfare and Institutions Code section 4361.6;
- 1.2 The RFP;
- 1.3 Guidance issued by DSH regarding the Program;
- 1.4 The Award Letter; and
- 1.5 All other applicable law, including, but not limited to, California Labor Code statutes applicable to public works projects.

The Non-County Entity is solely responsible and liable for the Non-County Entity and the Non-County Entity’s subcontractors’ performance and compliance with this Agreement, the above-referenced Program Requirements, and all other local, state, and federal laws applicable to the Infrastructure Project.

ARTICLE 2.
TERM

2.1 This Agreement shall commence on the Effective Date and shall expire automatically on June 30, 2028 (the “**Expiration Date**”); (the period from the Effective Date through the Expiration Date shall be referred to herein as the “**Term**”), unless earlier terminated by AHP or DSH or assigned to DSH pursuant to Section 2.3 below.

2.2 Upon the expiration of the Term, there shall be no extension or renewal of the Term of this Agreement, unless the Parties and DSH otherwise agree in writing.

2.3 In the event that the Term of this Agreement is not extended, renewed, or terminated early, and either Party hereto shall have a material obligation to the other Party by the terms of this Agreement, which shall not be satisfied on or before the Expiration Date, all of AHP’s rights and

obligations under this Agreement shall be assigned automatically to DSH, effective June 29, 2028, at 11:59 p.m. Each of the Parties hereto acknowledges and agrees that upon the occurrence of an assignment pursuant to this Section 2.3, such an assignment shall be effective without any further action by either Party hereto, or DSH, and from and after the date of such an assignment: (i) DSH shall be a Party to this Agreement and shall have all rights and obligations of AHP hereunder, and (ii) AHP shall cease to be a Party to this Agreement and shall be released from its obligations hereunder. Upon the occurrence of such assignment, the Term of this Agreement shall be extended automatically for a period of one (1) year and shall expire without any further action by either the Non-County Entity or DSH, unless the Non-County Entity and DSH otherwise agree in writing.

2.4 In the event that the Prime Contract expires, is terminated or amended in a manner removing AHP from responsibility as a Party to this Agreement, and either Party hereto shall have a remaining obligation to the other Party by the terms of this Agreement, which shall not be satisfied on or before the Expiration Date, all of AHP's right and obligations under this Agreement shall be assigned automatically to DSH effective upon the date of the expiration, termination or amendment.

2.5 Notwithstanding the foregoing or anything to the contrary contained herein, AHP and/or DSH shall have the termination rights as set forth in Article 7, and Article 8, of this Agreement.

ARTICLE 3. **PROGRAM FUNDS AND DISBURSEMENT**

3.1 Purpose. The Non-County Entity has been approved to receive Program Funds not to exceed the amount set forth in this Agreement to be used solely for the purposes set forth in this Agreement.

3.2 No Other Purposes. The Non-County Entity shall be responsible for administering and disbursing the Program Funds for purposes that are consistent with the Program Requirements. Program Funds, or any portion thereof, shall be disbursed to the Non-County Entity only upon satisfaction of the requirements of this section.

3.3 Conditions of Disbursement. No portion of the Program Funds shall be disbursed to the Non-County Entity for the costs of the Infrastructure Project until the Non-County Entity submits to AHP, and AHP and DSH, each, approve the documents described below, and any additional supporting information, as may be requested by AHP or DSH:

3.3.1 a complete project application packet ("**Project Application**") for each Infrastructure Project, with all supporting documents appended thereto, in the form attached to this Agreement and incorporated herein by this reference as **Attachment D**;

3.3.2 a complete disbursement request ("**Disbursement Request**") for the portion of Program Funds required to complete each Infrastructure Project, not to exceed Ninety-Three Thousand Seven Hundred Fifty and 00/100

Dollars (\$93,750.00) per bed, in the form attached to this Agreement and incorporated herein by this reference as **Attachment E**;

- 3.3.3 any additional documentation requested by AHP or DSH, reasonably related to the Infrastructure Project;
- 3.3.4 the portion of the Program Funds approved for disbursement to the Non-County Entity in response to its Disbursement Request shall be disbursed by AHP to the Non-County Entity within thirty (30) days of AHP's receipt of written notice from DSH of its approval of the Non-County Entity's (i) Project Application and (ii) Disbursement Request, provided that the Non-County Entity has otherwise satisfied the requirements of this Article 3, and is not in default under the terms of this Agreement; and
- 3.3.5 the Non-County Entity shall satisfy all of the requirements described in this Section 3.3, and submit with its Project Application, a complete compliance certification ("**Non-County Entity Compliance Certification**"), in the form attached to this Agreement and incorporated herein by this reference as **Attachment E**, together with, a fully executed and binding Memorandum of Agreement, by and between the Non-County Entity and the County in which the Infrastructure Project is located, as an attachment to a complete Non-County Entity Compliance Certification.

ARTICLE 4. **ELIGIBLE EXPENDITURES**

4.1 **Eligible Uses of Program Funds.** The Non-County Entity shall be responsible for ensuring that the Program Funds are used for eligible purposes consistent with the Program Requirements and this Agreement. The Program Funds shall be used solely for the following:

- 4.1.1 Acquisition, or down payment for acquisition, of real property;
- 4.1.2 construction costs, including construction of a new facility, or modification, expansion, or to retrofit an existing facility; or
- 4.1.3 one-time purchases of patient and staff furnishings and minor equipment.

ARTICLE 5. **PROGRAM IMPLEMENTATION REQUIREMENTS**

5.1 The Non-County Entity is responsible for the use, administration, disbursement, and monitoring of the Program Funds in accordance with the terms of this Agreement and the Program Requirements.

- 5.1.1 **Monitoring.** The Non-County Entity is responsible for monitoring use of the Program Funds to ensure that the Program Funds are only used for eligible uses in a manner consistent with the Program Requirements. The

Non-County Entity's procedures must include a corrective action plan for assessing the risk of activities, projects, and for monitoring the Infrastructure Project to ensure that Program Requirements are met.

- 5.1.2 Compliance with all Codes. The Infrastructure Project must be in compliance with all local, county, state and federal laws and requirements. Residential units must meet all building codes and adhere to building standards as outlined in California Code of Regulations, Title 24, Part 2.5.
- 5.1.3 Infrastructure Project Specifications. All residences funded with any Program Funds must provide bedrooms for no more than two (2) residents per bedroom, bathroom facilities, shared living space and access to outdoor spaces.
- 5.1.4 Accessibility and Nondiscrimination. The Infrastructure Project funded must be in compliance with the accessibility requirements set forth in California Building Code Chapters 11A and 11B and the Americans with Disabilities Act, Title II. In addition, the Infrastructure Project must adhere to either the Uniform Federal Accessibility Standards (UFAS), 24 CFR Part8, or the U.S. Department of Housing and Urban Development's modified version of the 2010 ADA Standards for Accessible Design (Alternative 2010 ADA), HUD-2014-0042-0001, 79 FR 29671 (5/27/14). Accessible units shall, to the extent feasible and subject to reasonable health and safety requirements, be distributed throughout the Infrastructure Project.
- 5.1.5 Prevailing Wages. Any construction work that is funded with any Program Funds is subject to state prevailing wage law, including California Labor Code section 1720 *et seq.* The Non-County Entity is responsible for ensuring that all subcontractors comply with prevailing wage law as well as any other applicable federal or state labor requirements.
- 5.1.6 Relocation. The Non-County Entity is responsible for ensuring that applicable relocation laws, including Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Section 4601 *et seq.*), the California Relocation Assistance Law (California Government Code section 7260 *et seq.*) and their implementing regulations ("**Relocation Laws**") are complied with, if any Program Funds will be used for the Infrastructure Project that will result in the displacement, as that term is defined in the Relocation Laws, of any persons, businesses, or farm operations. Pursuant to the Relocation Laws and guidance provided by DSH, the Non-County Entity is responsible for ensuring that (i) a relocation plan is prepared and approved by the Non-County Entity prior to proceeding with any phase of an Infrastructure Project or other activity that will result in the displacement of persons, businesses, or farm operations; and (ii) the Non-County Entity provides any required notices and relocation benefits.

5.2 Deed Restriction or Regulatory Agreement. The Non-County Entity is required to enter into a declaration of restrictions with DSH restricting use of the Infrastructure Project funded with any Program Funds to serve DSH-identified populations to be recorded on the real property upon which each Infrastructure Project is located that restricts the use of the Infrastructure Project for a term of thirty (30) years for new construction, and twenty (20) years for rehabilitation, of the Infrastructure Project. The deed restriction must be recorded on the title to the real property in the official records of the county upon which the Infrastructure Project is located before any Program Funds for the Infrastructure Project are disbursed. Notwithstanding the foregoing, in the event that the Non-County Entity is acquiring real property upon which the Infrastructure Project is to be constructed or operated, the deed restriction shall be recorded on the title to the real property in the official records of the county upon which the Infrastructure Project is located at the close of escrow. If the Infrastructure Project is leased, in which event the lease must be for a minimum term of thirty (30) years for new construction, and twenty (20) years for rehabilitation, of the Infrastructure Project, the deed restriction must be signed by both the lessee and the owner of the fee interest in the real property and recorded against both the fee interest in the real property and the leasehold interest. Notwithstanding the foregoing, in the event that DSH terminates the declaration of restrictions prior to the expiration of the term of such declaration of restrictions, DSH shall record a termination and release of the declaration of restrictions in the official records of the county where the Infrastructure Project is located.

ARTICLE 6.
PROJECT OVERSIGHT AND REPORTING

6.1 The Non-County Entity shall provide monthly and quarterly progress reports in connection with the Infrastructure Project, in a form and substance approved by AHP, in its sole discretion, including (i) a reconciliation showing all expenditures made with any Program Funds for each Infrastructure Project, (ii) any documentation or evidence requested by AHP to support such expenditures, (iii) completion of Infrastructure Project milestones, (iv) any substantial changes to the Infrastructure Project and (v) any other information reasonably related to the Infrastructure Project. In addition, the Non-County Entity shall be required to satisfy State financial and administrative reporting requirements and submit data through an online database.

6.2 Upon completion of the Infrastructure Project, the Non-County Entity shall provide periodic reports to DSH to monitor compliance with the terms of this Agreement, the Program Requirements, and to perform Infrastructure Project evaluations. Any information requested by DSH shall be submitted electronically in a format provided by DSH.

6.3 The Non-County Entity shall assign the necessary staff to monitor the use of the Program Funds, ensure adherence to the Program Requirements, and monitor ongoing compliance with Program Requirements for the duration of any deed restriction required by this Agreement or the Term of this Agreement, whichever is longer, or as may be required by the Non-County Entity.

6.4 The Non-County Entity shall comply with any reporting and record retention requirements in the Program Requirements or this Agreement.

6.5 Any Program Funds that have not been disbursed to the Non-County Entity by the expiration of the Period of Performance set forth in the Summary Cover Sheet shall no longer be

available to the Non-County Entity for disbursement for the Infrastructure Project. Any Program Funds that have been disbursed to the Non-County Entity but remain unexpended by the expiration of the Period of Performance shall be returned to DSH within thirty (30) calendar days after the expiration of the Period of Performance in accordance with directions provided by DSH. The Non-County Entity shall not be entitled to disbursement of any Program Funds after expiration of the Period of Performance and any such undisbursed funds shall be retained by DSH.

ARTICLE 7. **DEFAULT AND REMEDIES**

7.1 Event of Default. Any of the following, after notice to the Non-County Entity by AHP or DSH, provided in accordance with the notice requirements of this Agreement, and expiration of any applicable cure period, shall constitute an event of default (“**Event of Default**”) under this Agreement:

- 7.1.1 The Non-County Entity’s failure to timely satisfy each or any of the conditions set forth in this Agreement, or the Award Letter.
- 7.1.2 The Non-County Entity’s violation of any of the Program Requirements.
- 7.1.3 AHP’s or DSH’s determination of the following:
 - 7.1.3.1 The Non-County Entity has concealed any material fact from AHP or DSH related to the Non-County Entity;
 - 7.1.3.2 Any material fact or representation made or furnished to AHP or DSH by the Non-County Entity in connection with this Agreement shall have been untrue or misleading at the time that such fact or representation was made known to AHP, or subsequently becomes untrue or misleading;
 - 7.1.3.3 Any Certification provided by the Non-County Entity is determined to be untrue or misleading; or
 - 7.1.3.4 Any objectives or requirements of the Program cannot be met in accordance with this Agreement or within applicable timeframes, as memorialized by this Agreement.

7.2 Right to Cure. If the breach, violation, or default pursuant to Section 7.1 is not cured to AHP’s and DSH’s satisfaction, as determined by AHP and DSH, each in its sole and absolute discretion, within thirty (30) days of notice to the Non-County Entity, provided in accordance with the notice requirements of this Agreement, then AHP, with DSH approval, may declare an Event of Default under this Agreement.

- 7.2.1 Notwithstanding the foregoing, the Non-County Entity may request additional time to cure any default from AHP. AHP may, but shall not be required to, grant any such request, subject to DSH approval, such approval

shall not be unreasonably withheld, conditioned, or delayed. DSH's approval of the Non-County Entity's request for additional time to cure shall be subject to the Non-County Entity's continuing and diligent efforts to cure, and any additional cure period provided to the Non-County Entity shall be reasonable, as determined by DSH, in DSH's sole discretion. AHP shall provide notice to the Non-County Entity of approval or denial of the Non-County Entity's request for additional time to cure any default. In no event shall any extension of the cure period exceed thirty (30) days.

7.3 AHP/DSH Remedies. Upon the occurrence of an Event of Default, AHP (on DSH's behalf) or the State (represented by DSH in this Agreement) may take any and all actions or remedies that are available under this Agreement, at law, or in equity, including, but not limited to, the following:

- 7.3.1 temporarily withhold disbursement of any Program Funds pending correction of the breach, violation, or default;
- 7.3.2 disallow use of any Program Funds for all or part of the costs resulting from the breach, violation, or default;
- 7.3.3 wholly or partly suspend or terminate this Agreement and the Non-County Entity's award of the Program Funds, or disbursements of any portion thereof (any such suspension or termination of this Agreement or the Non-County Entity's award of the Program Funds shall be effective upon the Non-County Entity's receipt of AHP or DSH notice of termination or suspension);
- 7.3.4 withhold or deny further disbursements of Program Funds or awards to the Non-County Entity;
- 7.3.5 require the Non-County Entity to return all or part of any Program Funds disbursed to the Non-County Entity, including any interest;
- 7.3.6 specific performance;
- 7.3.7 injunctive relief; and
- 7.3.8 any and all remedies allowed by law or equity.

ARTICLE 8. **TERMINATION**

8.1 AHP and/or DSH shall have the right, each in its sole discretion and without prejudice to any other rights and remedies it may have under applicable law, to terminate this Agreement immediately upon notice of such termination to the Non-County Entity, if (i) an Event of Default occurs; (ii) three (3) violations, breaches or defaults by the Non-County Entity of the terms and conditions of this Agreement (whether the same or different) occur within any twelve-

month period, regardless of whether any or all such violations, breaches or defaults are timely corrected; (iii) the Non-County Entity files a petition in bankruptcy, (iv) the Non-County Entity is adjudicated by a court of competent jurisdiction to be bankrupt or insolvent, (v) the Non-County Entity makes an assignment for the benefit of creditors, (vi) the Non-County Entity makes an arrangement pursuant to any bankruptcy law, (vii) if a receiver is appointed for the Non-County Entity, (viii) the Non-County Entity fails to provide AHP with adequate assurances within a reasonable time that the Non-County Entity is financially solvent, or (ix) AHP or DSH determines that the Non-County Entity is financially insecure.

8.2 Notwithstanding the foregoing, or anything to the contrary stated herein, AHP may terminate this Agreement upon thirty (30) days' notice if AHP is directed by DSH to terminate this Agreement.

8.3 Upon termination of this Agreement for any reason, neither AHP nor DSH shall be liable for any work that is not performed in accordance with the Agreement or for any commitments made by the Non-County Entity to any third-party contractors. Upon any termination, neither AHP nor DSH shall be responsible for additional disbursements of any Program Funds after the termination date or for any damages to the Non-County Entity as a result of such termination. Upon termination, the Non-County Entity shall return all Program Funds to the State at the direction of AHP or DSH.

ARTICLE 9. **INDEMNIFICATION**

9.1 The Non-County Entity shall indemnify, defend, and hold harmless AHP, its officers, employees and agents, and DSH and its officers, employees and agents, against liabilities to third persons and other losses (not compensated by insurance or otherwise) and for any costs and expenses incurred by AHP and DSH, including reasonable attorneys' fees, judgments, settlements or penalties against all liabilities, claims, suits, demands or liens for damages to persons or property (collectively "**Claims**") (unless such Claims arise from the gross negligence or willful misconduct of AHP or DSH), arising out of, resulting from, or relating to, the Non-County Entity's performance under this Agreement and including, but not limited to, the following:

- 9.1.1 Any act, omission, or statement of the Non-County Entity, or any person employed by or engaged under contract with the Non-County Entity, that results in injury (including death), loss, or damage to any person or property;
- 9.1.2 Any failure on the part of the Non-County Entity to comply with applicable Program Requirements and requirements of law;
- 9.1.3 Any act or omission of any third-party contractor engaged by the Non-County Entity, including, but not limited to, any failure of any third-party contractor to comply with the Program Requirements and the terms of this Agreement.

- 9.1.4 Any failure on the part of the Non-County Entity or its third-party contractors to satisfy all claims for labor, equipment, materials, and other obligations relating to the performance of the work hereunder;
- 9.1.5 Any injury to property or person occurring on or about the infrastructure or the property of the Non-County Entity or the Infrastructure Project; or
- 9.1.6 Any claims related to the use, generation, storage, release, threatened release, discharge, disposal or presence of hazardous materials on, under or about the property upon which the Infrastructure Project funded with any Program Funds is located.

9.2 The Non-County Entity shall indemnify AHP or DSH, each, individually, or both, collectively, as the case may be, under this clause for any of the above acts attributable to its employees, consultants, agents, or lower-tiered subcontractors in connection with this Agreement. AHP or DSH shall provide timely notice of any Claims describing in reasonable detail such facts and circumstances with respect to such Claims. The Non-County Entity shall defend AHP or DSH, each, individually, or both, collectively, as the case may be, with counsel reasonably acceptable to AHP or DSH, respectively. AHP or DSH may, each, at its option and own expense, engage separate counsel to advise regarding the Claim and its defense. Such counsel may attend all proceedings and meetings. The Non-County Entity shall not settle any Claim without the consent of AHP or DSH, as applicable.

9.3 The Non-County Entity agrees to indemnify, defend and save harmless AHP, its officers, agents and employees and DSH, its officers, agents and employees from any and all claims, costs (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened), and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Non-County Entity in connection with this Agreement.

9.4 This indemnification shall survive the expiration or termination of the Agreement.

ARTICLE 10.
INSPECTIONS, AUDITS, AND RECORD RETENTION

10.1 AHP and DSH and any of their authorized representatives shall have the right to access any documents, papers, or other records of the Non-County Entity and any of its third-party contractors that are pertinent to any Program Funds, for the purpose of performing audits, examinations, and/or review regarding compliance with the provisions of this Agreement and the Program Requirements. Such monitoring activities shall include, but are not limited to, inspection of the Non-County Entity and third-party contractor's books and records, in addition to site inspections, as AHP or DSH deems appropriate.

10.2 AHP and DSH and any of their authorized representatives may perform compliance reviews and review procedures and documents pertaining to the Non-County Entity's compliance with the terms of this Agreement and the Program Requirements, perform onsite visits and desk reviews in order to ensure any Program Funds are expended for eligible uses and to protect against fraud, waste, and abuse. The Non-County Entity shall include in all agreements with third-party contractors, a requirement that the third-party contractor: (i) provide to AHP, and its authorized representatives, and DSH and its authorized representatives, access to the third-party contractor's records and facilities; and (ii) cooperate with any desk reviews.

10.3 The right to access records also includes timely and reasonable access to the Non-County Entity's and any third-party contractor's personnel for the purpose of interview and discussion related to the requested documents and/or information.

10.4 The right to access records is not limited to the required retention period but lasts as long as the records are retained by the Non-County Entity and any third-party contractor.

10.5 The Non-County Entity shall retain all financial records, supporting documents, statistical records, and all other records pertinent to any Program Funds for the term of this Agreement and for a minimum of three (3) years thereafter, and require that all third-party contractors retain all records related to any Program Funds for the same period.

10.6 Any review or inspection undertaken by AHP, its designee, or DSH, or its designee, of the Non-County Entity's records or of any third-party contractor's records or Infrastructure Project is solely for the purpose of determining whether the Non-County Entity is properly discharging its obligations to DSH, and should not be relied upon by the Non-County Entity or by any third parties as a warranty or representation by AHP or DSH as to the quality of the design, construction, or operation of the Infrastructure Project. The Non-County Entity agrees that claims based upon an audit finding and/or an audit finding that is appealed and upheld shall be recovered by AHP or DSH by one of the following options:

10.6.1 The Non-County Entity's remittance to AHP or DSH of the full amount of the audit exception within thirty (30) days following AHP request for payment; or

10.6.2 A repayment schedule which is agreeable to AHP, DSH and the Non-County Entity.

AHP reserves the right to select which option described above shall be employed; and AHP shall notify the Non-County Entity in writing of the claim procedure to be utilized. Interest on the unpaid balance of the audit finding or debt shall accrue at a rate equal to the maximum allowed by applicable law.

10.7 Reporting Requirements. The Non-County Entity shall provide AHP and DSH with the following reports:

- 10.7.1 Monthly and quarterly reports submitted within thirty (30) days of the end of each month or quarter, as applicable, in a form and substance acceptable to AHP, in its sole discretion.
- 10.7.2 A final report to be submitted no later than sixty (60) days after the final disbursement of any Program Funds for each Infrastructure Project, in a form and substance acceptable to AHP, in its sole discretion.

All reports shall be in a form and contain such information as required by DSH in its sole and absolute discretion. In addition to the above reporting requirements, AHP and DSH may request additional reports and information necessary for AHP and DSH to monitor compliance with the Program Requirements. The Non-County Entity shall be responsible for obtaining any necessary reporting information from its third-party contractors.

ARTICLE 11. **THIRD-PARTY BENEFICIARIES.**

The State, represented by DSH in this Agreement, is a third-party beneficiary of this Agreement. This Agreement shall not be construed so as to give any other person or entity, other than the Parties and DSH, any legal or equitable claim or right. DSH or another authorized department or agency representing the State of California may enforce any provision of this Agreement to the full extent permitted in law or equity as a third-party beneficiary of this Agreement. The State may take any and all remedies available in law and equity. In the event of litigation, the State may choose to seek any type of damages available in law or equity, up to the full amount of the Program Funds awarded to the Non-County Entity.

The Non-County Entity shall name AHP and DSH as third-party beneficiaries with rights of enforcement in all agreements entered into by the Non-County Entity with third-party contractors.

ARTICLE 12. **MISCELLANEOUS.**

12.1 Dispute Resolution:

- 12.1.1 The Parties shall use reasonable efforts to resolve any dispute arising under this Agreement within thirty (30) days pursuant to informal mediation before a retired judge with Judicial Arbitration and Mediation Services (“JAMS”) in Los Angeles, California.
- 12.1.2 If the Parties cannot resolve a dispute arising under this Agreement pursuant to Section 12.1.1, the Parties shall submit such dispute to arbitration in accordance with the provisions of the American Arbitration Association. The Parties shall conduct any arbitration in Los Angeles, California. The arbitrator’s decision in any such arbitration shall be final, conclusive, and binding on the Parties.

12.1.3 TO THE FULLEST EXTENT PERMITTED BY LAW, THE PARTIES HEREBY UNCONDITIONALLY WAIVE ANY RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY CLAIM ARISING OUT OF THIS AGREEMENT.

12.1.4 The Non-County Entity shall be obligated to continue to perform pursuant to this Agreement while any dispute is pending.

12.1.5 The State is not bound by any of the dispute resolution provisions set forth in this Section 12.1.

12.2 Attorneys' Fees. If a dispute arising out of this Agreement is finally adjudicated, the non-prevailing party shall pay the prevailing party's reasonable expenses incurred in connection therewith, including reasonable arbitration costs and reasonable attorneys' fees. If multiple items are disputed and the final decision is split, then the Parties shall allocate such expenses pro rata as to each item. This Section 12.2 does not apply to the State.

12.3 Waiver. AHP's failure to notify the Non-County Entity of a breach or to insist on strict performance of any provision of this Agreement shall not constitute waiver of such breach or provision.

12.4 Remedies. No remedy in this Agreement is exclusive of any other remedy available under this Agreement, at law or in equity. AHP or DSH may seek equitable relief, including an injunction, against the Non-County Entity in connection with any breach or threatened breach of this Agreement.

12.5 Limitation of Liability. Except as otherwise provided in this Agreement, or by applicable law, the Non-County Entity waives any right to seek, and AHP and DSH shall not be liable for, any special, consequential, or punitive damages; indirect, or incidental damages; or for any loss of goodwill, profits, data, or loss of use arising out of, resulting from, or in any way connected with the performance or breach of this Agreement, even if the Non-County Entity advises AHP or DSH of the possibility of any such damages.

12.6 Relationship. The Non-County Entity is an independent contractor with respect to AHP. This Agreement is not intended to create a partnership, joint venture, employment, or fiduciary relationship between the Parties or between any Party hereto and DSH.

12.7 Notices. Notices under this Agreement must be (i) in writing; (ii) addressed to the receiving Party at the address described in the Summary Cover Sheet (unless notice of a different address is given); and (iii) (A) if personally delivered to the recipient, notice is effective upon delivery, (B) if sent by a nationally recognized overnight courier service, notice is effective on the first business day following its timely deposit with such courier service, delivery fees for next business day delivery prepaid; no signature affirming receipt by the receiving party is required, the internal records of the courier service shall be accepted as sufficient evidence of the date of the deposit of the notice with the courier service, or (C) if sent by certified U.S. mail, notice is effective

three (3) days after deposit thereof in the U.S. mail, postage prepaid, certified, return receipt requested. Counsel for a Party may send notice on behalf of its client.

12.7.1 Notwithstanding the foregoing, the Parties may deliver any approval, disapproval, or request therefor via email. Such email notices and deliveries shall be valid and binding on the Parties, subject to the following:

12.7.1.1 Such email must be properly addressed to the other Party's Designated Representatives. For purposes of this Agreement, "**Designated Representative**" means initially (i) for AHP at ISTNotices@ahpnet.com and (ii) for the Non-County Entity, _____ and _____. A Party may change a Designated Representative only upon notice to the other Party pursuant to the requirements of Section 12.7(iii)-(A), (B) or (C).

12.7.1.2 If the sender receives a bounce-back, out-of-office or other automated response indicating non-receipt, the sender shall (i) re-attempt delivery until the other Party confirms receipt, or (ii) deliver the item in accordance with Section 12.7(iii) (A), (B) or (C).

12.8 Governing Law. The place of performance of this Agreement is California and the laws of the State of California, shall govern the validity, performance, enforcement, and interpretation of this Agreement. Any litigation or enforcement of an award must be brought in the appropriate state or federal court in the State of California, County of Sacramento. Each Party consents to personal and subject matter jurisdiction and venue in such courts and waives the right to change venue with respect to any such proceeding. The Parties acknowledge that all directions issued by the forum court, including injunction and other decrees, shall be binding and enforceable in all jurisdictions and countries.

12.9 Assignment. The Non-County Entity shall not assign, delegate, or otherwise transfer this Agreement, or its duties, or obligations in connection therewith, in whole or in part without the prior approval of AHP and DSH. AHP's obligations under this Agreement shall be assignable to DSH or DSH's designee upon DSH's request without the Non-County Entity's consent. In the event that AHP assigns its obligations under this Agreement to DSH, AHP shall make commercially reasonable efforts to transition any reasonably necessary documentation related to this Agreement to DSH or its designee, at no cost to DSH provided however, that AHP shall have no obligation to incur any liability, pay fees, charges, or reimbursement in connection with any assignment, wind-down or transition services.

12.10 Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the Parties with respect to its subject matter. It supersedes all oral or written agreements or communications between the Parties. No understanding, agreement, modification, change order, or other matter affecting this Agreement shall be binding, unless in writing, signed by both Parties. No handwritten changes shall be effective unless initialed by each Party.

12.11 Independent Legal Advice. AHP and the Non-County Entity, each, have reviewed and negotiated this Agreement using such independent legal counsel as each has deemed appropriate.

12.12 Exhibits. The Attachments, Schedules, and Addenda, attached to this Agreement are a part of this Agreement and incorporated into this Agreement by reference.

12.13 Partial Invalidity. If any part of this Agreement is unenforceable, the remainder of this Agreement and, if applicable, the application of the affected provision to any other circumstance, shall be fully enforceable.

12.14 Captions. The headings contained herein are for convenience only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.

12.15 Force Majeure. Neither Party shall be liable to the other for loss or damages due to failure or delay in rendering performance caused by circumstances beyond its reasonable control, if such failure could not have been overcome by the exercise of due diligence, due care, or foresight. Circumstances may include, but are not limited to, acts of God or a public enemy; wars; acts of terrorism; riots; fires; floods; epidemics; quarantine restrictions; labor disputes; strikes; defaults of subcontractors/vendors; failure/delays in transportation; unforeseen freight embargoes; unusually severe weather; or any law/order/regulation/request of a state or local government entity, the U.S. Government, or of any agency, court, commission, or other instrumentality of any such governments. Times of performance under this Agreement may be appropriately extended for excused delays if the Party whose performance is affected promptly notifies the other of the existence and nature of such delay.

12.16 Publicity. Without prior written approval of the other, neither Party shall use the other's name or make reference to the other Party or any of its employees in publications, news releases, advertising, speeches, technical papers, photographs, sales promotions, or publicity purposes of any form related to this work or data developed hereunder, unless disclosure of such materials is required by legal, accounting, or regulatory requirements beyond the disclosing Party's reasonable control. Use of either Party's name may be made in internal documents, annual reports, and proposals. This section shall survive expiration/termination of this Agreement. Notwithstanding the foregoing, the Non-County Entity agrees that the State may use and refer to the Non-County Entity in any publication, news release, advertising, speech, technical paper, or for any other purposes.

12.17 Notice of Litigation. Promptly, and in any event within five (5) business days after an officer or other authorized representative of the Non-County Entity obtains knowledge thereof, the Non-County Entity shall provide written notice to AHP of (i) any litigation or governmental proceeding pending against the Non-County Entity which could materially adversely affect the Non-County Entity's ability to perform its obligations under this Agreement and the Program Requirements; and (ii) any other event which is likely to materially adversely affect the Non-County Entity's ability to perform its obligations under this Agreement and the Program Requirements.

12.18 Survival. Except as otherwise stated, sections that by their terms impose continuing obligations or establish continuing rights shall be deemed to survive the expiration or termination of this Agreement.

12.19 Successors. This Agreement shall be binding upon the Parties, their successors, and assigns.

12.20 Approvals. Whenever this Agreement calls for a Party's approval or for DSH's approval, approval shall mean prior written approval (including via email), not to be unreasonably conditioned, delayed, or withheld, unless sole discretion is expressly noted.

12.21 Counterparts; Electronic Signatures. The Parties may sign this Agreement in several counterparts, each of which constitutes an original, but all of which together constitute one instrument. Electronic signatures are valid and shall bind the Party delivering such signature.

SIGNATURES ON THE FOLLOWING PAGE

IN WITNESS THEREOF, the Parties hereto have executed this Agreement by their duly authorized respective officers as of the day and year last written below.

AHP:

**ADVOCATES FOR HUMAN
POTENTIAL, INC.**, a Massachusetts
corporation

NON-COUNTY ENTITY:

**[INSERT FULL LEGAL NAME],
[ENTITY TYPE]**

By: _____
Charles Galland,
General Counsel

By: _____
[NAME OF NON-COUNTY ENTITY'S
REPRESENTATIVE]
[TITLE]

Date: _____

Date: _____

LIST OF ATTACHMENTS

Title	No. of Pages
Attachment A – RFP	
Attachment B – Non-County Entity Proposal	
Attachment C – Award Letter	
Attachment D – Form of Project Application	
Attachment E – Form of Disbursement Request	
Attachment F – Form of Non-County Entity Compliance Certification	

ATTACHMENT A

RFP

ATTACHMENT B
NON-COUNTY ENTITY PROPOSAL

ATTACHMENT C

AWARD LETTER

ATTACHMENT D
FORM OF PROJECT APPLICATION

ATTACHMENT E
FORM OF DISBURSEMENT REQUEST

ATTACHMENT F
NON-COUNTY ENTITY COMPLIANCE CERTIFICATION

NON-COUNTY ENTITY COMPLIANCE CERTIFICATION

MEMORANDUM OF AGREEMENT

I, _____, as an authorized representative of _____ (“**Non-County Entity**”), certify that:

1. I possess the legal authority to submit this certification on behalf of the Non-County Entity and the information and statements set forth below are, to the best of my knowledge and belief, true and correct.
2. Capitalized terms not defined herein shall have the meanings ascribed thereto in that certain Program Funding Agreement by and between the Non-County Entity and AHP.
3. I am providing this information in connection with the Project Application for approval and funding of the Infrastructure Project _____ **[insert name and delete this note]** from the State of California (“**State**”) pursuant to the California Department of State Hospitals (“**DSH**”) Incompetent to Stand Trial (“**IST**”) Diversion and Community-Based Restoration Infrastructure Program (“**Program**”) to use a portion of the Program Funds for the acquisition, down payment for acquisition, construction or renovation, of real property, furnishings, and for the provision of diversion or community-based restoration of competency services, to address the increasing number of patient referrals to DSH, and hereby acknowledge that the State and its contract manager, Advocates for Human Potential, Inc., a Massachusetts corporation (“**AHP**”) are relying on this information in disbursing any Program Funds.
4. The Non-County Entity has negotiated and attached to this Certification a copy of the fully executed and binding Memorandum of Agreement by and between the Non-County Entity and the County in which the Infrastructure Project is located (“**Memorandum of Agreement**”).
5. Upon any amendment or modification of the Memorandum of Agreement, the Non-County Entity promptly shall provide AHP a copy of any fully executed amendment or modification.
6. The Memorandum of Agreement shall not be amended or modified in any manner, at any time, without prior approval of AHP, or the State, in their sole discretion.
7. The Non-County Entity shall provide AHP and the State prompt written notice of its receipt of a notice of termination or expiration of the Memorandum of Agreement.
8. The general contractor for the construction or renovation of the Infrastructure Project shall be registered with the California Department of Industrial Relations (“**DIR**”) as required by California Labor Code section 1725.5. The Non-County Entity further certifies that any subcontracts entered into by the general contractor shall require the general contractor and all subcontractors to comply with California Labor Code section 1720 *et seq.*, including, but not limited to, the payment of prevailing wages, for all work performed at the Infrastructure Project.

SIGNATURE ON THE FOLLOWING PAGE

I certify under penalty of perjury that the above information is true and correct and that the Non-County Entity shall comply with all requirements set forth above, in the Non-County Entity's Compliance Certification, Memorandum of Agreement, as a condition of receiving any Program Funds.

Authorized Signature

Typed Name of Signatory

Title of Signatory

Date